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November 19, 2008

BY HAND

Jeff S. Jordan

Supervisory Attorney

Complaints Examination & Legal Administration

Federal Election Commission

999 E Street, N.W.

Washington, D.C. 20463

Re: MUR 6079

Democratic Freshmen PAC and James Smith, as treasurer

Dear Mr. Jordan:

This letter is filed on behalf of Democratic Freshmen PAC (the "Committee") and James Smith, as treasurer, in response to the Complaint filed in the above-referenced matter by the National Republican Congressional Committee (the "Complainant"), alleging violations of the Federal Election Campaign Act (the "Act"). For the reasons set forth below, the Complaint is without merit and should be dismissed.

The Commission may only find "affiliation" if the committees in question were "established, maintained, financed or controlled" by the same person. See 11 C.F.R. § 111.4(a), (d). Here, Complainant claims that because Representatives Mike Thompson and Debbie Wasserman Schultz served as Honorary Co-Chairs of Democratic Freshmen PAC, the Committee was affiliated with their respective PACs, the Victory in November Election Political Action Committee ("VINE PAC") and the Democrats Win Seats Political Action Committee ("DWS PAC").

The Complaint presents no evidence that the Committee was "established, maintained, financed or controlled" by any other committee or any Member of Congress. This letter proves, in fact, that the Committee has never been "established, maintained, financed or controlled" by anyone other than its Official Treasurer, James Smith. Further, the Committee

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has never played any role in "establishing, maintaining, financing, or controlling" VINE PAC or DWS PAC.

Because the political committees named in the Complaint are not affiliated, they are not subject to the same contribution limits. The Complaint presents no evidence that the Committee has received or made contributions in excess of the applicable limits. Accordingly, because the Complaint alleges no actual conduct by Respondents that violates a statute or regulation over which the Commission has jurisdiction, it should be dismissed.

Factual Background

The Democratic Freshmen PAC was established on November 29, 2006, to raise money for the reelection of freshmen Democratic Members in 2008. James Smith is Democratic Freshmen PAC's treasurer, and has served as the Committee's treasurer since the Committee filed its Statement of Organization in 2006. At no point has the Committee ever listed an affiliated committee on its Statement of Organization.

Mr. Smith established Democratic Freshmen PAC on his own initiative. No Member of Congress requested that Mr. Smith establish the Committee, nor has any Member played a role in financing, maintaining or controlling the Committee. Mr. Smith is responsible for raising funds for the Committee and also bears full responsibility for determining how the funds are spent. The decisions to make contributions to certain candidates were his and his alone, made through his own review of political information.

The Committee asked Representatives Thompson and Wasserman Schultz to serve as honorary co-chairs in order to assist its fundraising efforts. The title was intended to represent a "show of support" – but did not signify any substantive responsibility in the operation, maintenance or financing of the PAC. In this same vein, Representatives Rahm Emanuel, Allen Boyd, Joe Crowley, Bart Stupak, Xavier Becerra, Paul Hodes, and Tim Walz were also named as honorary vice-chairs on invitations to Committee fundraisers and events. Each Member did no more than lend a name to the Committee's events and fundraising endeavors. They played no role in "establishing, maintaining, financing, or controlling" the Committee, nor were they responsible for determining where to spend the Committee's resources.

Commission reports indicate that DWS PAC and VINE PAC were both formed well before Mr. Smith organized the Committee. Mr. Smith has never played any role in the operation of either DWS PAC or VINE PAC. DWS PAC and VINE PAC have never contributed or provided support to the Democratic Freshmen PAC, nor has the Committee contributed or provided support to DWS PAC or VINE PAC.

Legal Analysis

Because the Committee is not affiliated with either DWS PAC or VINE PAC, the Complaint fails to present any reason to believe that the Democratic Freshmen PAC committed any violation of Commission regulations.

Committees are affiliated if they are established, financed, maintained or controlled by the same person or group of persons. See 11 C.F.R. § 100.5(g)(2). In determining whether committees are affiliated, the Commission will consider a number of factors in the context of the overall relationship of the committees. Such factors may include whether there is some indication based on common or overlapping officers or employees of a formal or ongoing relationship between the committees; whether one committee participates in the governance of the other; whether one committee provides significant funds or support to the other committee on an ongoing basis; whether a committee or its agent had an active or significant role in the formation of another committee; and whether the committees have similar patterns of contributions or contributors which indicates a formal or ongoing relationship between the committees. See *id.* § 100.5(g)(4)(ii); see also MUR 5355, First General Counsel's Report at 6.

None of these factors supports the Complaint's allegation that the Committee is affiliated with either DWS PAC or VINE PAC:

First, the committees do not have common or overlapping officers or employees. See 11 C.F.R. § 100.5(g)(4)(ii)(E). Mr. Smith, the treasurer, is the Committee's only officer, and he is not an officer or employee of either DWS PAC or VINE PAC. The Committee has no employees; it engages independent contractors to assist Mr. Smith with fundraising and legal compliance.

Second, neither DWS PAC nor VINE PAC, nor Representative Wasserman Schultz nor Representative Thompson, participates in the governance of the Democratic Freshmen PAC. None has the authority to hire, appoint, demote or otherwise control officers of Democratic Freshmen PAC. See *id.* § 100.5(g)(4)(ii)(B), (C). Likewise, the Committee does not participate in the governance of either DWS PAC or VINE PAC, and does not have the authority to hire, appoint, demote or otherwise control the officers of either committee. While Representatives Thompson and Wasserman Schultz may be involved in the operations of their respective leadership PACs, they have no control over the operations of the Committee. As honorary co-chairs, they lend their names to the Committee for fundraising purposes only, as is common in the fundraising arena. See, e.g., House Ethics Manual at 260, 349 (2008) (contemplating that Members may occasionally serve in "positions solely of an honorary nature," without triggering special disclosure). They have played no role in the day to day operations of the Committee, nor do they have any decisionmaking authority concerning contributions.

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The Commission dismissed a complaint very much like this one in MUR 5355. It found no reason to believe that Representative Deborah Pryce's leadership PAC was affiliated with another committee for which she served as Honorary Chair. See MUR 5355, Certification at 1. Despite media accounts describing Representative Pryce as having "founded" the second PAC, evidence that the two committees shared a common treasurer and address, and "some degree of overlap in the two committees' contribution patterns", the Commission *still* found that there was no reason to believe that the two committees were affiliated. See MUR 5355, First General Counsel's Report at 15. Furthermore, the Commission has consistently "found that inferences about the possible degree of informal influence that a Member of Congress might have had on a non-connected committee's contribution decisions were not enough to sustain reason to believe findings based on alleged affiliation." See *id.*; see also MUR 5121, First General Counsel's Report at 18.

Third, none of the other Respondents to this Complaint has provided funds or arranged for funds to be provided to the Committee in a significant or ongoing basis. See 11 C.F.R. § 100.5(g)(4)(ii)(H). During the 2008 election cycle, Representatives Wasserman Schultz and Thompson did not contribute to the Committee personally, nor did they make contributions to the Committee from their principal campaign committees or leadership PACs. Likewise, the Committee did not make contributions to DWS PAC or VINE PAC. The Complaint itself makes no allegation that any of the three committees provided funds, goods or services to the others in such a manner as to indicate possible affiliation.

Fourth, no other committee or Member of Congress played an active or significant role in the formation of the Committee. See *id.* § 100.5(g)(4)(ii)(I). Mr. Smith was solely responsible for establishing the Committee; he continues to be responsible for the Committee's operations. The Statements of Organizations submitted by DWS PAC, VINE PAC, and the Committee were each filed by different individuals, and the Complaint submits no additional evidence to suggest that DWS PAC, VINE PAC, or their agents played any role in the formation of the later-registered Committee.

Fifth, DWS PAC, VINE PAC, and the Committee do not have similar patterns of contributions or contributors, such that would indicate a formal or ongoing relationship between the committees. See *id.* § 100.5(g)(4)(ii)(J). While the three committees did receive contributions from some of the same contributors, and made contributions to some of the same candidates, the totality of records show that the committees' activities were altogether different. A cursory review of the Commission's records would indicate that many committees have given to a similar array of candidates, but the Commission has specifically rejected such similarity as grounds for "affiliation".

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"Similar patterns of contributions and contributors are evidence of affiliation only when they indicate a formal or ongoing relationship between the sponsoring organizations or committees." Explanation and Justification, Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,100 (Aug. 17, 1989). Given the limited universe of Democratic donors and competitive congressional races, "political committees with similar political viewpoints and objectives may tend to make contributions to the same candidates and receive contributions from the same donors even though the committees are completely independent." *Id.*

During the 2008 election cycle, the Committee made contributions to 29 federal candidates. Consistent with the Committee's purpose, roughly 85% of these candidates who received contributions from the Committee were freshman House Democrats seeking reelection. A thorough review of Commission reports would surface myriad committees giving to this same array of candidates, who, through the circumstances of their recent elections, would be especially likely recipients of political contributions.

But the giving patterns of VINE PAC and DWS PAC show an altogether broader focus. And this belies the suggestion of an ongoing relationship. VINE PAC made contributions to 59 federal candidates – while only 24 of these candidates, less than half, also received contributions from the Committee. DWS PAC made contributions to 83 federal candidates – only 28 of whom, just one-third, also received contributions from the Committee.

The same is true of the three committees' fundraising efforts, which show only a modest overlap of donors. Out of a total of 43 PACs and individuals who made contributions to the Committee, only 18 – less than one-third – also made contributions to VINE PAC or DWS PAC. Fewer than 10 percent – just 13 – of the 134 PACs and individuals who made contributions to DWS PAC also made contributions to the Committee. And only 10 of the 79 PACs and individuals who made contributions to VINE PAC also made contributions to the Committee. Just five PACs made contributions to all three committees.

Thus, to the extent there are some similarities in the three committee's contributors and contributions, they do not show a formal or ongoing relationship. They can be explained entirely through the common, partisan leanings of the three committees.

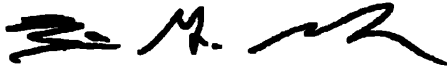
The extreme to which the Complaint takes the affiliation analysis can be seen in its risible claim that DWS PAC and VINE PAC are affiliated, solely because Representative Wasserman Schultz and Representative Thompson lent their names to the Democratic Freshmen PAC's efforts. See Compl. at 1. By the Complaint's faulty reasoning, every Member who lends a name to multiple fundraising efforts is deemed to control not only the supported entity, but even the PACs of the other Members who join in lending support. It was just this sort of illogic that the Commission

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rightly rejected in MUR 5355.

For the foregoing reasons, Respondents respectfully request that the Commission dismiss the Complaint and take no further action.

Very truly yours,



Brian G. Svoboda
Kate Sawyer Keane
Counsel to Respondents

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